Supreme Court, U.S.
FILED
DEC 14 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-40

In the Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, PETITIONER

v.

FRANK S. ZOLIN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

ERIC M. LIEBERMAN
EDWARD COPELAND
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
740 Broadway, Fifth Floor
New York, New York 10003
(212) 254-1111

MICHAEL LEE HERTZBERG
275 Madison Avenue
New York, New York 10016
(212) 679-1167

Counsel for Respondents Church of Scientology of California and Mary Sue Hubbard

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Petitioner

PETITION FOR A WRIT OF CERTIORARI FILED JULY 7, 1988
CERTIORARI GRANTED OCTOBER 17, 1988

In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-40

UNITED STATES OF AMERICA, PETITIONER

v.

FRANK S. ZOLIN, ET AL.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

TABLE OF CONTENTS*

	Page
1. Docket entries in the court of appeals, No. 85-6065	1
2. Docket entries in the court of appeals, No. 85-6105	15
3. Docket entries in the district court, No. CV 85-0440-HLH	18
4. Petition to Enforce Internal Revenue Summons	27
Exhibit 1 (summons)	33
5. Declaration of Steven J. Petersell in Support of Petition, dated January 15, 1985	39

---

* The opinions and orders of the court of appeals and the district court are printed in the appendix to the petition for a writ of certiorari and have not been reproduced here.

	Page
6. Reporter's Transcript of Hearing, April 30, 1985, 80-93, 101-111	41
7. Reporter's Transcript of Hearing, June 10, 1985, pp. 1-13	61
8. Order granting certiorari	71

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-6065

UNITED STATES OF AMERICA, PLAINTIFF/APPELLEE

v.

FRANK S. ZOLIN,
CLERK OF THE SUPERIOR COURT, DEFENDANT/APPELLEE

CHURCH OF SCIENTOLOGY OF CALIFORNIA AND
MARY SUE HUBBARD, INTERVENORS/APPELLANTS

DOCKET ENTRIES

Date	Filings-Proceedings	
1985		
07-03	ASSIGNED DOCKET NUMBER. lu	nf
07-03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. lu	
07-03	SENT BILLING LETTER. lu.	
July 20	Docket Fee Pd.	65.
07-29	Rec'd late Aplt's CADS. (CONFATT) 7/26/85.	vm
Aug. 9	FILED AS OF JULY 31, CERTIFICATE OF RECORD. 6/18	tu
Aug. 12	Recvd as of 7/29, ltr dtd 7/25, from Glenn L. Archer, Jr., Asst. Atty. Gen. and Michael L. Paup, Chief, Appellate Section re: notice of appearance for aple (USA) (casefile) 7/25 -rmc-	

Date	Filings-Proceedings
1985	
Sept. 23	Filed as of 9/16, aple's notice of appearance; John F. Murray, Acting Asst. Atty General and Michael L. Paup, Chief as counsel of record. (casefile) 9/12 -rmc-
OCT. 29	Recvd as of 10/28, ltr dtd 10/25, from Eric M. Lieberman, Esq., counsel for Church of Scientology of California address to Confatt Secty-CG re: I appeared for the intervenor (CSC) in the DC in this case, and will be appearing and probably arguing the case before the Ct of Appeals. I apparently was let off the list of attys to be included in the prebriefing conference. Please include me in the prebriefing conference call on 11/19/85. (confatt) 10/25 -rmc-
Nov. 22	Filed order (CONFATT, RGK) a further prebriefing conference will be held by telephone on Dec. 11, 1985, at 10:00 a.m. pacific time. gb
Dec. 19	Filed order (CONFATT, RGK) the Church and Hubbard shall file a brief of not more than 50 pages on or before Jan. 31, 1986; the US shall file an answering and opening brief of not more than 75 pages on or before Mar. 24, 1986; the Superior Court may file a brief of not more than 10 pages on or before Apr. 7, 1986; the Church shall file a reply and answering brief of not more than 50 pages on or before May 2, 1986; the US may file a reply brief of not more than 25 pages within 21 days of the service date of the Church's brief; and the parties shall serve each other with the principal briefs by overnight mail. aw

Date	Filings-Proceedings
1986	
Feb. 4	Filed aplts' (CSC & M.S. HUBBARD) mtn for ext of time to file opening brief and to adjust briefing schedule; affidavit of Edward Copeland. (Civatt) 2/3 -rmc-
Feb. 26	Filed order (BARNES) appeals 85-6065 and 85-6105 are consolidated. Intervenors' motion of Feb. 4 for an extension of time to Feb. 28 in which to file their opening brief is granted. The United States shall file its answering and opening brief by April 28. The Superior Court may file a brief by May 12. Intervenors' reply and answering brief is due on June 6. The U.S.'s reply is due within 21 days thereafter. No further extensions will be granted intervenors in the absence of extraordinary circumstances. The page limits of the 12/19/85 confatt order shall apply. jlc (SEE SECOND SHEET)
Mar. 3	Filed orig & 15 aplts' opening briefs (CSC & Hubbard) 49-pgs.; 5 Excerpts of Record. 2/28 ec
Mar. 10	CERTIFICATE OF RECORD for 85-6065 also applies to 85-6105 per Dominick Falzone, Central Cal DC. dmd
APR. 24	Filed as of 4/22 Aple/Crs-Aplt. Mtn. for extension of time for filing the government's brief & to adjust briefing schedule. (4/21) (CIVATT) ru
May 05	Filed Order (Dpty Clk GLK) The government's motion for an ext. time to file its combined opening and answering brief is granted. All due dates in the order of 2/26/86 are extended by seventeen days. dmd (85-&

Date	Filings-Proceedings
May 20	Filed mtn (USA) to file brief and supplemental excerpt of record under seal. 5/19 (CIVATT) ec
May 21	Filed mtn (Church of Scientology) to seal the combined answering brief for the US and supplemental excerpts of record; affidavit of Edward Copeland, Esq. 5/19 -Civatt- ec
May 22	Recd. notice of appearance of counsel for aple/x-aplt United States: Charles E. Brookhart and John A. Dudeck, Jr. jlc
May 22	Filed orig & 15 aple/x-aplt's briefs; 5 Supplemental Excerpts of Record (72 pgs) 5/15 (NOTE: MOTION PENDING FILED UNDER SEAL – NOT FOR PUBLIC) (Briefs on shelf) jlc *FILED UNDER SEAL*
May 30	Recvd as of May 23 ltr dtd 5/20 from Frederick R. Bennett re: Please advise the court that Aple Zolin believes that the issues in this litigation are adequately briefed by the real parties in interest . . . and waives his right to file a brief with the court. 5/20 (Civatt) vm
June 6	Filed order (BARNES) the parties' mtns to file the brief and supplemental excerpt of the United States under seal are granted. dmd
June 20	Filed Aplts' Church of Scientology and Mary Sue Hubbard motion for an ext of time to file answering and reply brief. Declaration of Edward Copeland. 6/19 (Civatt) vm
June 20	Filed Aplts' Church of Scientology and Mary Sue Hubbards' motion for an order requiring that a copy of the Declaration of C. Phillip Xanthos be provided to Aplt's. 6/18 (Civatt) v,m

Date	Filings-Proceedings
June 25	Filed order (Dpty Clk-GLK) aplt's mtn (Scientology, Hubbard) for ext. time until 7/10/86 to file answering/reply brief is granted. dmd
Jul 1	Recvd as of 6/30, from aple, ltr dtd. June 27, 1986, in response to Church of Scientology's mtn for order requiring copy of sealed declaration. (civatt) ec
JUL 17	FILED AS OF 7/11 ORIG. & 15 Intervenors/x-aplts (Church & Hubbard) REPLY & ANSWERING BRIEF. & FIVE SUPPLEMENTAL EXCERPTS OF RECORD. (55p) (7/10) (wrong color covers counsel notified) ru
July 18	Filed order (Mtn.Aty.-GLK) intervenors' mtn to compel the government to produce this document is denied as moot. dmd
July 18	Recd. corrections to aplt/x-aple (Church & Hubbard) reply & answering brief. (Records) jlc
July 21	Filed as of 7/16 Aplt's Church of Scien. & Hubbards' mtn to seal the answering brief. Declaration of E. Copeland. 7/10 (Civatt) vn
Jul 25	Filed USA mtn for ext of time for filing reply brief; declaration of cnsl. 7/24 -civatt- ec
Aug 6	Filed order (BARNES) aple/x-aplt's motion for 7/25, for a 28-day ext. of time to file the reply brief is granted. The brief shall be filed on or before 8/24. No further extensions will be granted. The motion of aplts/x-aples to file their answering and reply brief under seal is granted. jlc
Aug. 29	Filed aple/crs-aplt (USA) motion to file reply brief under seal. (CIVATT), 8/25. jw

Date	Filings-Proceedings
Aug. 29	Recvd orig & 15, aple/x-aplt (USA) reply brief in seal jiffy bag. (in vault) -rmc-
Sept 10	Filed order (BARNES) the govt's mtn to file reply brief under seal is granted. ec
Sept 10	Filed Reply briefs (USA) prev. recvd (stored in vault) ec
Oct. 20	RECVD ORIG DC FILE IN 3 VOLUMES; PLEADINGS VOLS. 1-3, (TO BE STORED IN RECORDS UNIT) -rmc- calendared NOV 6, 1986
Oct. 28	Filed Intervenor/Aplt's (Church of Scientology, Hubbard) suggestion of mootness. (10/27) (Panel) dmd
Oct. 31	Recvd ltr from aplt dtd 10/30 re: "this most recent development supports our position on mootness" . . . (Panel) dmd
Nov. 6	ARGUED & SUBMITTED TO BROWNING, GOODWIN, FARRIS. ec
Nov. 7	Recieved letter from aple (USA) dated 11/4 re: "The following statement is submitted in response to the Court's request for information regarding the briefs . . ." (PANEL) jlc
Nov. 7	Filed aple's (USA) response to suggestion of mootness. (11/4) (PANEL) jlc
Nov. 24	Filed aple's (USA) motion to file second supplemental excerpt of record under seal. (11/18) (PANEL) jlc
Nov. 24	Received 5 copies of aple's (USA) second supplemental excerpt of record. (11/18) (PANEL) jlc

Date	Filings-Proceedings
Dec. 2	Filed aplts' (Church of Scientology & Mary Sue Hubbard) opposition to aple's mtn to file second supplemental excerpt of record. (12/1) (PANEL) jlc
Dec. 15	Filed as of 12/12, aplts' motion to submit additional authority w/additional authority enclosed. (12/11) (PANEL) jlc
1987	
Jan. 10	Filed as of 1/8, mtn of Church of Scientology to submit additional authority w/authority attached. (1/7) (Panel) dmd
Jan. 14	Received as of 1/5, letter dated 12/31 from aple (USA) re: additional citations. (PANEL) jlc
Jan. 20	Received letter dated 1/16 from aple (USA) re: additional citations. (PANEL) jlc
FEB 9	ORDERED OPINION FILED (Farris) & JUDG TO BE FILED & ENTERED. ec
FEB 9	FILED OPINION (affirmed.) ec
FEB 9	FILED & ENTERED JUDGMENT. ec
Feb 18	Filed order (BROWNING, GOODWIN, FARRIS) the mtns to submit additional authority are granted, and the additional authorities are ordered filed as of the date of their receipt. dmd
Feb 18	Filed as of 1/05, additional authority prev. recvd. 1/5. dmd
Feb. 20	Filed mtn & order (DEP CLK: RMC) upon mtn of the aple/x-aplt (USA) it is hereby ordered that its mtn for an ext of time until 3/20/87, in which to file a petition for rehearing or petition for rehearing with suggestion for rehearing en banc is granted. -rmc-

Date	Filings-Proceedings
Mar. 03	Filed Order (BROWNING, GOODWIN & FARRIS) The motion of the United States to file a second supplemental excerpt of record under seal is denied. the clerk will return the second supplemental excerpt, already received, to counsel for the United States. jw
Mar. 03	Returned Second supplemental excerpts of record, per order of 3/3/87. jw
Mar. 24	Filed as of 3/20, (USA) mtn to file petition for rehearing under seal. (Panel) 3/19 -rmc-
Mar. 24	Recvd as of 3/20, original and 33, (USA) petition and suggestion for rehearing en ban. (15-pgs) (PANEL) 3/19 -rmc-
Apr. 2	Filed mtn of CHURCH OF SCIENTOLOGY OF CALIFORNIA AND MARY SUE HUBBARD to strike portion of gov't petition and suggestion for rehearing en banc. (Panel and All Active Judges) 4/1 -rmc-
Apr. 6	Filed Order (BROWNING, GOODWIN, & FARRIS) The Government's motion to file the petition for rehearing and suggestion for rehearing en banc, already received, under seal, is granted. It will be circulated to all active judges. jw
Apr. 6	Filed government's petition for rehearing previously received. (all active judges). jw
Apr. 13	Filed opposition to mtn to strike arguments on the "Crime Fraud" issue as set forth in the govt's petition and suggestion for rehearing en banc. (Panel and All Active Judges), served on 4/10/87. -rmc-

Date	Filings-Proceedings
May 4	Filed order (BROWNING, GOODWIN & FARRIS) the Church of Scientology of Calif. and Mary Sue Hubbard are requested to respond within 14 days of the date of this order to the substance of the discussion of the "crime-fraud" exception to the atty-client privilege that is contained in the US's petition for rehrg. and suggestion for rehrg. en banc. The response shall specifically . . . (see casefile) The response shall not exceed 15 pages. jlc
May 12	Filed aplts' Church of Scientology of California and Mary Sue Hubbard motion for an ext of time to file aplts' response pursuant to the order filed 5/4/87; declaration of Eric M. Lieberman. (PANEL), served on 5/11/87. -rmc-
May 21	Filed order (BROWNING, GOODWIN & FARRIS) aplts are granted an additional 7 days to file a response to the United States' petition for rehearing and suggestion for rehearing en banc pursuant to our order of 5/4. The response is due 5/25. jlc
May 26	Filed aplt's reply to petition for rehearing and suggestion for rehearing en banc (15 pgs) original + 33 copies. (5/22) (Active Judges) dmd
JUL 24	FILED CERT RECORD ON APPEAL ONE ENVELOPE EXHIBITS (UNDER SEAL). ec
Nov 6	Filed order (BROWNING, Chief Judge, GOODWIN, WALLACE, KENNEDY, ANDERSON, HUG, TANG, SCHROEDER, FLETCHER, FARRIS, PREGERSON,

Date	Filings-Proceedings
	ALARCON, POOLE, NELSON, CANBY, NORRIS, REINHARDT, BEEZER, HALL, WIGGINS, BRUNETTI, KOZINSKI, NOONAN, THOMPSON, O'SCANNLAIN, and LEAVY, CJJ) it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The previous three-judge panel assignment is withdrawn. dmd
Nov 6	RE-OPENED CASE – JS/34 prepared. dmd.
Nov. 19	Filed order (BROWNING, ANDERSON, TANG, PREGERSON, ALARCON, NORRIS REINHARDT, BEEZER, BRUNETTI, THOMPSON, LEAVY) oral argument shall be held in San Francisco, on Thursday, Feb. 11, 1988 at 1:30 p.m. Each party shall prepare and additional brief, not to exceed fifteen pages, discussing the appropriateness of an independent evidence rule when applying the crime-fraud exception to the atty-client privilege.
Nov. 19	The parties shall file twenty copies of their original briefs and excerpt of record by 12/14/87. Cross-aplt shall file twenty copies of its supplemental brief by 12/30/87. Cross-aples shall file twenty copies of their supplemental brief by 1/14/88. -rmc- (SEE CASEFILE FOR THE REST OF THE ORDER)
Dec. 14	Filed aplt's (Church of Scientology of Calif. & Mary Sue Hubbard) 20 add'l copies of opening brief and excerpts,. (EN BANC PANEL). jw

Date	Filings-Proceedings
Dec. 14	Filed aplt/crs-aples (Church of Scientology of Calif. & Mary Sue Hubbard) 20 add'l copies of supplemental excerpts of record. (EN BANC PANEL). jw
Dec. 14	Filed 20 add'l copies of (Church of Scientology of Calif. & Mary Sue Hubbard) crs-aples answering/reply brief, (EN BANC PANEL). jw
Dec. 17	Filed as of 12/16, 20 add'l copies of reply brief of aple/crs-aplt's (UNITED STATES), (EN BANC PANEL). jw
Dec. 17	Filed as of 12/16, 20 add'l copies of aple/crs-aplt (UNITED STATES) answering/opening brief, (EN BANC PANEL). jw
Dec. 17	Filed 20 add'l copies of aple/crs-aplt (UNITED STATES) supplemental excerpts of record, (EN BANC PANEL). jw
1988	
Jan. 4	Filed 20 copies of aple/crs-aplt (UNITED STATES) suppl. brief on rehearing en banc. (EN BANC PANEL) 15 pages 12/30 (mtn. submitted to file briefs under seal. jw (orig & copies aside from what has been circulated to en banc panel has been placed on shelf)
Jan. 4	Filed aple/x-aplt's motion to file supplemental brief on rehearing en banc under seal. (12/30) (EN BANC PANEL) jlc
Jan. 11	Filed joint motion of cross-aples (Church of Scientology of CA & Mary Sue Hubbard) for ext. of time to file suppl. brief, (PANEL), 1/8/88. jw

Date	Filings-Proceedings
Jan. 14	Filed order (BROWNING) x-aples' mtn for an ext of time for filing their supplemental brief is granted. Their brief is now due 1/19/88. -rmc-
Jan. 21	Filed orig and 20 copies of x-aple's (Church of Scientology & Mary Sue Hubbard) suppemental brief on rehearing en banc, (EN BANC PANEL). 15 pgs, (1/19)
Jan. 29	Filed intervenors/aplts (Church of Scientology & Mary Sue Hubbard) motion to preclude Government counsel from quoting from or paraphrasing the contents of documents found to be privileged in the court below. (1/28) (EN BANC PANEL) jlc
Feb. 2	Filed Order (BROWING, ANDERSON TANG, PREGERSON, ALARCON, NORRIS, REINHARDT, BEEZER, BRUNETTI, THOMPSON & LEAVY, CJJ) Oral argument will begin on half hour earlier than originally scheduled. The argument is now scheduled for 1:00 p.m. on Thursday, February 11, 1988. jw
Feb. 10	Recvd letter dated 2/10, from M.L. Hertzberg and E.M. Lieberman re: Mr. John Dudeck, counsel for the government, informed our co-counsel, Edward Copeland, that the government would not be filing a written response to the mtn to preclude government counsel from quoting from or paraphrasing the contents of documents found to be priviledged in the ct below. (Limited En Banc Panel), served on 2/10/88. -rmc-
Feb. 11	CAUSE ARGUED AND SUBMITTED BEFORE: BROWNING, ANDERSON,

Date	Filings-Proceedings
	TANG, PREGERSON, ALARCON, NORRIS, REINHARDT, BEEZER, BRUNETI, THOMPSON & LEAVY, CJJ). ogm
Feb. 12	Filed Order (BROWING, Chief Judge, ANDERSON, TANG, PREGERSON, ALARCON, NORRIS, REINHARDT, BEEZER, BRUNETTI, THOMPSON, & LEAVY, CJJ) The Gov't's motion to have its supplemental brief on the rehearing en banc, originally Filed January 4, 1988, placed under seal is granted. The clerk is directed to place the brief under seal. Intervenors' motion to preclude government's counsel from quoting or paraphrasing the contents of the MCCS tapes during oral argument is granted. Government's counsel is ordered to comply with this restriction. jw
Mar. 3	Recvd letter dated 3/2/88, from Gary R. Allen, counsel for aple (USA) re: 5th Cir. en banc opinion in U.S. vs. Barrett (85-2054), served on 3/2/88 (EN BANC PANEL) -rmc-
Mar. 7[illegible]	Filed order/and dissent ANDERSON JOIN IN DISSENT, TANG, PREGERSON, ALARCON, NORRIS, REINHARDT, BEEZER DISSENTING, BRUNETTI, THOMPSON JOIN IN DISSENT and LEAVY) That portion of the three-judge panel opinion in United States v. Zolin, 809 F.2d 1411 (9th Cir. 1987), beginning with the first full paragraph on page 1418 to and including the last full paragraph in the second column on the same page, is ordered withdrawn. The

Date	Filings-Proceedings
	opinion of the three-judge panel will stand in all other respects. The order dated Nov. 6, 1987, that this matter be reheard en banc, is vacated as improvidently granted. -rmc- (FOR PUBLICATION)
June 27	Recvd copy of letter dated 6/22/88, from U.S. Supreme Court addressed to Mr. Fried re: your application for an ext of time within which to file a peition for a writ of certiorari has been presented to Justice O'Connor, who on 6/20/88, signed an order extending your time to and including 7/8/88. -rmc-
Jul 5	Filed Order for Publication (BROWNING, TANG, PREGERSON, ALARCON, NORRIS, REINHARDT, BEEZER, BRUNETTI, THOMPSON, AND LEAVY) the opinion published at 842 F.2d 1135 is amended to include the following concurrence. FILED JUDGE NORRIS CONCURRENCE. . . . . see text. -rmc-
Jul 18	Recvd notice from Supreme Ct of filing petition for certiorari, #88-40, filed 7/7/88. -rmc-

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-6105

UNITED STATES OF AMERICA, PETITIONER/APPELLANT

v.

FRANK S. ZOLIN,
CLERK OF THE SUPERIOR COURT, RESPONDENT/APPELLEE

CHURCH OF SCIENTOLOGY OF CALIFORNIA AND
MARY SUE HUBBARD, INTERVENORS/APPELLANTS

RELEVANT DOCKET ENTRIES

Date	Filings-Proceedings
1985	
July 18	DOCKET NUMBER ASSIGNED tl USA
July 18	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL tl
Aug. 6	Filed as of 8/5, aplt's CADS. (CONFATT) 8/2 -rmc-
Aug. 8	Recvd as of 8/6, ltr dtd 8/2, from Glenn L. Archer, Jr., and Michael L. Paup re: notice of appearance for aplt. (casefile) 8/2 -rmc-
Sept. 23	Filed as of 9/16, aplt's notice of appearance; John F. Murray, Acting Asst. Atty General and Michael L. Paup as counsel of record. (casefile) 9/12 -rmc-

Date	Filings-Proceedings
Oct. 29	Recvd as of 10/28, in 85-6065, ltr dtd 10/25, from Eric M. Lieberman, Esq., counsel for Church of Scientology of California address to Confatt Secty-OG re: I appeared for the intervenor (CSC) in the DC in this case, and will be appearing and probably arguing the case before the Ct of Appeals. I apparently was left off the list of attys to be included in the prebriefing conference. Please include me in the prebriefing conference call on 11/19/85. (confatt) 10/25 -rmc-
Nov. 22	Filed in 85-6065, order (CONFATT, RGK) a further prebriefing conference will be held by telephone on Dec. 11, 1985, at 10:00 a.m. pacific time. gb
Dec. 19	Filed in 85-6065 order (CONFATT, RGK) the Church and Hubbard shall file a brief of not more than 50 pages on or before Jan 31, 1986; the US shall file an answering and opening brief of not more than 75 pages on or before Mar 24, 1986; the Superior Court may file a brief of not more than 10 pages on or before Apr 7, 1986; the Church shall file a reply and answering brief of not more than 50 pages on or before May 2, 1986; the US may file a reply brief of not more than 25 pages within 21 days of the service odate of the Church's brief; and, the parties shall serve each other with the principal briefs by overnight mail. aw
1986	
Feb. 4	Filed in 85-6065, aplts' (CSS & M.S. HUBBARD) mtn for ext of time to file opening

Date	Filings-Proceedings
	brief and to adjust briefing schedule; affidavit of Edward Copeland. (Civatt) 2/3 -rmc-
Feb. 26	Filed in 85-6065, order (BARNES) appeals 85-6065 and 85-6105 are consolidated. Intervenors' motion of Feb. 4 for an extension of time to Feb. 28 in which to file their opening brief is granted. The United States shall file its answering and opening brief by April 28. The Superior Court may file a brief by May 12, Intervenors' reply and answering brief is due on June 6. The US's reply is due within 21 days thereafter. No further extensions will be granted intervenors in the absence of extraordinary circumstances. The page limits of the Dec. 19, 1985 confatt order shall apply. jlc SEE 85-6065 FOR FURTHER PROCEEDINGS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV85-0440-HLH

UNITED STATES OF AMERICA, PLAINTIFF

v.

FRANK S. ZOLIN,
CLERK OF THE SUPERIOR COURT, DEFENDANT

DOCKET ENTRIES

Date	NR	Proceedings
1-18-85	d	1. Fld Petn to enforce IRS SUMMS. Decl & Memo of P&A in suppt. thereof. Case may be ref'd to Mag Geffen for discv. LODGED OSC
*		
1-25-85	sh	2. OSC Resp Raul Acosta OSC on 2-25-85 10am. Copy of Ord with petition & the Attach be served promptly upon resp by IRS. Within 10 days resp shall fl & serve a written resp. Petitioner.
2-11-85	sh	3. Intervenors request for judicial notc intervenor.
2-11-85	sh	4. Intervenors not of oppo to petition to enforce IRS summons declrtn of Maria E. Stratton.

Date	NR	Proceedings
2-11-85	sh	5. Ex Parte applict to cont hrg on ord to S/C re petition to enforce IRS summons declrtn of Donald C. Randolph. Intervenor
2-11-85	sh	6. Declrnt of service Petitioners.
2-11-85	sh	7. Note of mot mot for leave to Intervene in oppo to petition to enforce IRS summons memo of P/A declrtn of Donald C. Randolph; exh. Intervenor.
2-11-85	sh	8. resp to OSC meno of P/A declrtn of Raul Acosta, exh resp
*		
1/23/85	llm	9. Notc of Related Case. Pltf.
2/7/85	llm	10. ORD (WMB) (HLH) transfring actn to cal of Judge HARRY L. HUPP for all fur proceedings. Case many be ref to Mag. Tassopulos for for discvry. CC ptys.
2/20/85	lp	11. MO: Govt havng expressed non opositn to mot to interven set for hrng 3/11/85, mot is takn off cal for said dat & is grntd. Intervenors opositn, if any, is to be fld & served on or b/f 2/26/85. hrng on OSC is cont'd to 4/1/85 10am to permit Intervenor to fil any additional documnts, wh must be fld on or b/f 2/26/85. clerk is directed to mail cpys of min ord to all ptys.
2/4/85	lp	12. Fld respondnet notc of related actn.

Date	NR	Proceedings
2/19/85	lp	13. Fld pltf opposition to applic to cont hrng on OSC.
2/21/85	lp	14. MO: Due ot crt's clerical error, hrng was inadvertantly set for 4/1/85. that clerical error is now correctd, hrng on petitn for Enforcement is set for 3/11/85 10am. Intervenor has untl 3/4/85 to fil any documnts.
2/19/85	lp	15. Fld pltf govt's reply to P/A sumittd on behalf of respondent.
2/21/85	lp	16. Fld intervenor ex parte applic to extend tim w/in wh opposition to petitn for enforcmnt must be fld. LODGED & d.
3/4/85	da	17. Opp to pet to enforce IRS;memo of Ps & As;declar of Maria E. Stratton;exh intvr Church of Scientology of CA.
3/6/85	da	18. Intvr req for disc, memo of Ps & As, declar of Donald C. Randolph intvr. Church
3-8-85	sa	19. Submission of Reporters Transcript of proceedings taken on 2-11-85.
		20. Resp to intervenors opp & supple declaration of Steven Petersell. USA.
3/11/85	da	21. Petition for enforcmnt. Crt rulngs written ord f/w.Disc req denied.Any gov't papers due no later than 3/15/85 and further church papers due 3/22/85 MO
3-6-85	sh	22. ORD Granting intervenor leave to fl documnt in excess of 35 pgs.

Date	NR	Proceedings
3-12-85	sh	23. Applic of non resident atty to appear in a specific case. Edward Copeland.
3-12-85	sh	24. Applic of non resident atty to appear in a specific case Eric Lieberman.
3-12-85	sh	25. NOtc of ruling to provide calif state Crts opportunity to appear or to otherwise intervene & ORD Set for Further hrg on 4-1-85 at 10am. IN event the state Superior Crt, Appellate Crt, or Supreme Crt for any reason seeks to intervene or otherwise assert a position, they may do so on or before 3-25-85
3-12-85	sh	26. INterim Ord re petition to enforce summons. INtervenors request to stay these proceedings is denied. The petition to enforce summons is Denied as to the following doc on the ground that sufficient relevancy to the IRS inquiry has not been shown. Intervenors discvry request is Deni Intervenors request for an evidentiary hrg on the good faith issu is granted. Bal of hrg is cont to 4-1-85 10am. & Calif Supreme Crt to intervene on or before 3-25-85 to express their position
3/18/85	da	27. Ex parte app for ord sealing petitioner's plea filed 3/15/85;declar of Donald C. Randolph intvr

Date	NR	Proceedings
3/18/85	da	28. ORD sealing petitioner's memo in resp to crts req & for part reconsideration of interim ruling
*3/15/85	da	29. Petitioner's memo in resp to crt's req & fr part reconsideration of interim uling petitioner USA (UNDER SEAL)
3/18/85	da	30. Stmt of non-intervention deft Sup Crt of the state of Cal.L.A., Co.
3/18/85	da	31. Crt ord docu filed 3/15/85 sealed & signs prop ord sealing dccu.. Pltf to submit declar by 3/22/85 re source of info as discussed on rcrd of the reporter MO
3/15/85	da	Reporters transcript of procs taken 3/11/85
3-21-85	sh	32. Petitioners notc re 4-1-85 hrg. 10am.
3-21-85	sh	33. MEmo of Petitioner oppo intervenors mot for sealing Ord & to Vacate Ord.
3-21-85	sh	34. Amended statmnt of Non Intervention. The Superior Crt of the State of Calif County of LA.
3/22/85	da	35. Stip & ORD that Frank S. Zolin be sub in this actn in place of Raul Acosta
3/22/85	da	Reporters transcript of procs taken 3/18/85
3/22/85	da	36. Reply to govnt's memo in resp to opp to petition for enforcement; Declaration of Barrett S. Litt:exhs intvr

Date	NR	Proceedings
*3-20-85	sa	37. Ex parte applic for leave to intervene; Declaration of Michael Lee Hertzberg; Declaration of Donald C. Randolph. Mary Sue Hubbard LODGED prop ord.
3/20/85	da	38. ORD that Mary Sue Hubbard is granted leave to intervene
3/21/85	da	39. Ex parte app to Mary S. Hubbard for leave to intervene is grnted. MO
3/28/85	da	40. Reply memo in supp of app for sealing ord; exh intvr
4/2/85	da	41. OSC re summons enforcement cont to 4/22/85 3:00PM
3/27/85	da	42. Joinder in intvr's reply to govn't memo in resp to opp to petition to enforce summons intvr Mary Sue Hubbard
4/1/85	da	43. Petition for enforcement to 4/8/85 10:00AM MO
4/11/85	da	44. Ex parte app for ord setting hrg on mtn to quash subp duces tecum, memo of Ps & As & supp declar petitioner
4/11/85	da	LODGED prop ord
4/16/85	lp	45. Fld ORD that hrng on mot to quash subp duces tecum is set for 4/18/85 4:15pm.
4/16/85	lp	46. Fld petitnr notc of mot & mot to quash subp duces tecum, 4/18/85 4:15pm
4/17/85	da	47. Resp to intvr's reply petitioner

Date	NR	Proceedings
*4/16/85	da	48. App & ORD of non-resident atty Michael L Hertzberg to appear in spec case designating Donald C. Randolph as local co-cnsl Mary Sue Hubbard
4/18/85	nm	49. Interventor's opp to mot to quash subp; memo of P&As & declar of Donald Raldopph & John Peterson in suppt.
		50. MO: Crt GRTS mot to quash subp D/T & signs Ord quashing subps D/T.
		51. ORD quashing subps D/T issd to Special Agts Xanthos, Lipkin & Petersell.
4/22/85	da	52. OSC re: enforcement of IRS summons is cont to 4/29/85 3:00PM MO
4/26/85	da	53. Surreply to Govnt resp intvr
4/30/85	da	54. ORD reconsideration denied as to exh 5G & 5I. IRS is entitled to inspect & copy exh 5K,5L,50, 5P & 60 & the summons is to be enforced as to those items. As to exh 5C,crt finds Crt's copy will remain sealed til aft appellate review then returned to Superior Crt.Docu shall not be delivered to any other govn't agency unless tax prosecution is sought or Ord of crt is obtained. This ord is stayed fr 60 days.
4/29/85	da	55. OSC re: enforcement of I.R.S. summons. Crt terminates hrg on taking

Date	NR	Proceedings
		evidence on the summons proc. Further hrg cont to 4/30/85 9:00AM
4/30/85	da	56. OSC. Petition fr enforcement of summons granted in part & denied in part purs to formal ord MO
4/30/85	da	57. List of exh & wit
5/2/85	da	58. Notc of change of address of atty intvr
5/6/85	da	Reporters transcript of procs taken 4/29/85 & 4/30/85
5/9/85	da	LODGED ord petitioner USA
5/9/85	da	50. Notc of mtn & mtn fr reconsideration of Crt's ORD of 4/30/85 returnbl 6/10/85 10:00AM & declar of C.PHilip Xanthes re MCCS tapes(UNDER SEAL) petitioner U.S.A.
5/15/85	da	51. Ex parte applic to strike petitioner's mtn fr reconsideration of crt's ord; Memo of law;declar of Donald C. Randolph intvr
5/15/85	da	LODGED ord (2) intvr
5/17/85	da	52. DENIED ord striking petitioners mtn fr reconsideration
5/17/85	da	53. Stip & ORD that Intvr's opp papers to min of petitioner fr reconsideration of Crt's ord be fld & served no later than 5/28/85. Petitioner's reply will be fld & served no later than 6/3/85

Date	NR	Proceedings
5-21-85	cw	54. ORD denying intervenor's ex parte appl.
5/24/85	da	55. Opp to petitioner's mtn fr reconsideration of crt's ord of 4/30/85 intvr
6/4/85	da	56. Reply to intvr's opp to mtn fr consideration pltf
6-10-85	lpc	57. MO: Crt ORD pltf mot for reconsdration of 4-30-85 denied;
6-18-85	sb	Reporter transcript of proceeding on 6-10-85
7/01/85	TS	58. Intrvnr's NOTC OF APPEAL to 9th Cir. C/A frm jdmt ent 4/30/85. Billed for docket fee.
7/15/85	TS	60. Petnr's NOTC OF APPEAL to 9th Cir. C/A frm ord ent 6/10/85. & NOTC OF CROSS APPEAL to 9th Cir. C/A from ord ent 4/30/85. Fees waived.
7/22/85	da	61. Transcript designation & ordering form
12/4/85	da	LODGED ord from 9th CCA that a further prebriefing conf will be held by telephone on 12/11/85 10:00AM Pacific Time.
1-10-86	sb	Lodged Order 9th Circuit C/A Church & Hubbard file brief not over 50 pages on or before 1-31-86, USA shall file ans * opening brief before 3-24-86 Superior Crt may file brief not more than 10 pages Church file reply ans brief 5-2-86

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NO. CV-85 0440 WMB (Gx)

UNITED STATES OF AMERICA, PETITIONER

v

RAUL ACOSTA, ACTING COUNTY CLERK,
LOS ANGELES COUNTY, RESPONDENT

PETITION TO ENFORCE INTERNAL REVENUE SUMMONS, DECLARATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Petitioner, United States of America, by and through its attorneys of record, Robert C. Bonner, United States Attorney for the Central District of California, and Charles H. Magnuson, Assistant United States Attorney, Chief, Tax Division, hereby petitions this Court to judicially enforce an Internal Revenue Service summons, a copy of which is attached hereto and marked as Exhibit 1.

1. This proceeding is brought under the authority of Sections 7402, 7602 and 7604 of the Internal Revenue Code.

2. Respondent's place of business is located in the judicial district of the Central District of California.

3. The Internal Revenue Service ("IRS"), an agency of the United States of America, is, and at all relevant times had been, conducting an investigation of possible criminal violations of the Internal Revenue Code and related provisions by Lafayette Ronald Hubbard during the period 1979-1983.

4. In connection with its investigation, the IRS has learned that certain materials in the custody of the Clerk

of the Superior Court of Los Angeles County in connection with the action *Church of Scientology of California v. Armstrong*, No. C 420153 (Super. Ct. L.A. County), may be relevant to the determination of whether any offenses connected with the administration or enforcement of the Internal Revenue laws have been committed.

5. On October 24, 1984, the IRS served the subject summons on John C. Corcoran, County Clerk for Los Angeles County by handing an attested copy to him. (Under California law the county clerk acts as clerk of the superior court in and for his county. Cal. Gov. Code § 26800.) Mr. Corcoran resigned as County Clerk, effective on or about November 30, 1984. Since that time, respondent has been duly appointed and authorized to serve as Acting County Clerk.

6. On November 21, 1984, agents of the IRS inspected and copied a portion of the summoned materials. On December 19, 1984, agents of the IRS inspected and copied an additional portion of the summoned materials. Respondent and his predecessor have refused, however, to provide for inspection and copying the following materials requested in the summons:

Exhibit No. (500 Ser.)	Description
DDDD (identified in summons as "4-D")	Handwritten note by L. Ron Hubbard ("LRH") regarding injuries and illness.
EEEE (4-E)	LRH handwritten note regarding control over mankind.
FFFF (4-F)	LRH handwritten note regarding psychoses.

Exhibit No. (500 Ser).	Description
GGGG (4-G)	LRH handwritten note regarding control over others.
GGGGG (5-G)	Document entitled "The Office of L. Ron Hubbard" regarding Scientology organization.
IIIII (5-I)	LRH letter regarding organization of the Church.
KKKKK (5-K)	LRH order regarding legal fees, 22 Jan. 1978 (2 pp.).
LLLLL (5-L)	LRH order regarding legal fees, 22 Jan. 1978 (1 p.).
OOOOO (5-O)	LRH note regarding the Mayor of Clearwater, Florida, 22 March 1978.
PPPPP (5-P)	LRH Statement regarding money from Scientology, 16 Feb. 1978.
BBBBBB (6-B)	LRH letter to Mary Sue Hubbard regarding control of the Church.
OOOOOO (6-O)	LRH handwritten note regarding the Fair Game Policy.

7. On November 21, 1984, respondent's predecessor, pursuant to the instant summons, had allowed the IRS agents to inspect and copy Exhibit 500-CCCCC, known as the "MCCS tapes." On November 26, 1984, the Church of Scientology of California ("the Church") and Mary Sue

Hubbard, intervenor in the *Armstrong* case, in response to the removal of a state court subpoena for the return of the copied materials, filed an application for Temporary Restraining Order with the District Court for the Central District of California, No. CV 84-9003-HLH(Bx). Pursuant to this Application, the District Court issued an Order on November 27, 1984 requiring the United States to place into the custody of the District Court clerk all materials copied from the records of the Superior Court on November 21, 1984, as well as all reproductions of such materials or notes reflecting their contents. A copy of this Order is attached as Exhibit 2. Between November 27, 1984, and November 29, 1984 all materials subject to the District Court Order were submitted to the Clerk.

8. On November 29, 1984, the Church and Mary Sue Hubbard also submitted an Application for Preliminary Injunction an [*sic*] the District Court proceeding and a hearing was held before District Judge Harry L. Hupp on December 7, 1984. Pursuant to that hearing, the Court issued an Order on December 10, 1984 (a copy of which is attached as Exhibit 3) allowing the United States to recover from the District Court Clerk all materials in his custody except those that were copies of materials that had been identified as remaining under seal in the Superior Court's Memorandum of Intended Decision. Such copies remain in the custody of the District Court Clerk pending further hearings to be held January 21, 1985. An inventory of the materials in the Clerk's custody conducted by counsel for the Church and counsel for the IRS revealed that the only such materials were copies of the MCCS tapes and notes reflecting their contents.

9. Neither the MCCS tapes nor any of the materials listed in paragraph 6 above are in the petitioner's possession or control.

10. There is no Justice Department referral in effect with respect to Lafayete Ronald Hubbard for the periods being investigated.

11. The IRS has followed all the procedural steps required by law.

WHEREFORE, petitioner prays for enforcement of the subject summons as follows:

A. That the respondent be ordered to appear and show cause before this Court why he should not be compelled by this Court, under Internal Revenue Code § 7604(a), to produce those items required by the summons which he has thus far refused to produce;

B. That respondent be ordered by the Court to appear before the Internal Revenue Service at a time and place to be determined by the Internal Revenue Service and then and there produce those items required by the summons which he has thus far refused to produce;

C. That it be determined that the subject summons is, and at all times has been, fully enforceable as to the MCCS tapes and that, accordingly, the Clerk of the Court should return to petitioner all materials remaining in the Clerk's custody pursuant to the Court's Order of December 10, 1984; and

D. That the Court grant petitioner its costs in this proceeding and such other and further relief as may be proper.

DATED:

Respectfully submitted,

ROBERT C. BONNER
United States Attorney
Charles H. Magnuson
Asst. United States Attorney
Chief Tax Division

/s/ Charles H. Magnuson
CHARLES H. MAGNUSON
Attorney for Petitioner
United States of America

Exhibit 1

SUMMONS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

Form 2039
(Rev. Jan. 1983)

In the matter of

LAFAYETTE RONALD HUBBARD

Internal Revenue District of Los Angeles
Periods 1979-1983

The Commissioner of Internal Revenue
To John C. Corcoran
At County Clerk, Los Angeles County

You are hereby summoned and required to appear before Special Agent, Steven Petersell an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

The following materials in your custody in connection with the Church of Scientology of California v. Gerald Armstrong No. C420153 (Superior Court, L.A. County)

(See Attached List)

Business address and telephone number of Internal Revenue Service officer named above: 300 N. Los Angeles Street, Room 5016, Los Angeles, California (213) 688-3120

Place and time for appearance: at 300 N. Los Angeles Street, Room 5016, Los Angeles, California (213) 688-3120 on the 7th day of November, 1984 at 10:00 o'clock A.M. Issued under authority of the Internal Revenue Code this 24th day of October, 1984.

STEVEN J. PETERSELL	Special Agent
Signature of Issuing Officer	Title
[sig. illegible)	Branch Chief
Signature of Approving Officer (if applicable)	Title

Original to be kept by IRS **Form 2039 (Rev. 1-83)**

EXHIBIT # (500 Series)	DESCRIPTION
L	HCO POLICY LETTER OF 1 Sept. 66: "FOUNDER" (1 pg)
R	EXECUTIVE DIRECTIVE FROM L. RON L. HUBBARD-"CONFIDENTIAL LHR NO. 1 "DUTiES OF PERS SEC" July 12, 1968 (6 pgs)
S	S.O. ED 489 INT 18 Feb. 76 "RE: MY POST" & S.O. FLALG BUREAUX DATA LETTER 564 8 Dec. 75 "LRH PERSONAL PRO FUNCTIONS AND PUBLICS" (3 pgs total)
4-D	HUBBARD HANDWRITING RE: FEIGNING INJURIES AND ILLNESSES (See paperclipped section)
4-E	HUBBARD HANDWRITING ADMISSIONS RE: CONTROL OVER ALL MANKIND AND NAVAL BACKGROUND
4-F	HUBBARD HANDWRITING ADMISSIONS RE: PSYCHOSES
4-G	HUBBARD HANDWRITING ADMISSIONS RE: HUBBARD'S CONTROL OVER OTHERS
4-R 4-U, 4-V	RE: LETTERS TO L. RON HUBBARD, JR. 18 Nov. 80
5-A	FILE—"CONSTANTINE DIAMITIDES" CONTROL OF SCIENTOLOGY TO GREECE 1967 (whole file)
5-3	FiLE-NAAP-/APA/PSYCHOLOGY/PHYCHOTHERAPY/CANCEL CHURCH (whose file)

EXHIBIT # (500 Series)	DESCRIPTION
5-C	MCCS TAPES
5-D	CAL DOC INVENTORY – BLACK BINDER #361
5-E	HUBBARD EXPLORATIONAL COMPANY (whole file)
5-F	HANDWRITTEN RE: UNDATED RESIGNATIONS (1 pg)
5-G	"THE OFFICE OF L. RON HUBBARD" RE: SCIENTOLOGY COMPANIES (17 pgs)
5-H	"RESIGNATION AS TRUSTEE" (5 pgs)
5-I	LETTER FROM HUBBARD RE: ORGANIZATION OF CHURCHES (3 pgs)
5-J	CONFERENCE/PICK UP PROJECT WITH BOUDIN (8 pgs)
5-K	CHURCH TO PAY LRH LEGAL FEES 22 Jan. 78 (2 pgs)
5-L	CHURCH TO PAY LRH LEGAL FEES 22 Jan. 78 (1 pg)
5-M	HUBBARD RE: LEGAL STRATEGY 28 Jan. 78 (1 pg)
5-N	HUBBARD RE: FRENCH AFFAIR 16 Feb. 78 (4 pgs)
5-O	HUBBARD RE: FORCING MAJORY TO RESIGN 22 March 78 (1 pg)
5-P	HUBBARD SAYS DOES NOT RECEIVE $ FROM SCIENTOLOGY 16 Feb. 78 (3 pgs)
5-S	HUBBARD'S CONTROL OF U.S. MOVE (SCIENTOLOGY TO CLEARWARTER) (stapled pack of material)

EXHIBIT # (500 Series)	DESCRIPTION
5-T	HUBBARD/IRS 1959-61 TAX CASE (4 pgs)
5-V	FILE – "BOARD MINUTES AND LEDGER ITEMS"
5-W	RE: SO. 1 (on page 3) (3 pgs)
5-X	RE: OTC ACCOUNT (11 pgs)
5-Y	OTS FINANCES (23 pgs)
5-Z	CHURCH MONIES INTO HUBBARD SWISS ACCOUNTS (10 pgs)
6-A	SEQUENCE OF \ACTIONS FOR NEW BOARD OF C OF S OF CALIF. UK (6 pgs)
6-B	HUBBARD/MSH LETTER RE: CONTROL (35 pgs)
6-C partial	BLUD BINDER – "WHITE HOUSE/RUSSIANS"
6-E	HANDWRITTEN RE: FIND CRIMINAL PAST 31 Aug. 66 (2 pgs)
6-F	HANDWRITTEN RE: FIND UNSAVOR SIDE OF PAST 16 Aug. 66
6-H	HANDWRITTEN RE: HIT HARD WITH OUR STATEMENT/LIABILE AND SLANDER 16 Dec. 66 (24 pgs)
6-J	HANDWRITTEN RE: PINKERTON/FAIR GAME/BRAINWASHING Sept. 15 (13 pgs)
6-K	LETTER TO VIRGINIA – FAIR GAME May 17, 1952 (2 pgs)
6-L	HANDWRITTEN RE: OPEN UP A TOTAL WAR ON IRS GESTAPO TACTICS 17 June 65 (2 pgs)

EXHIBIT # (500 Series)	DESCRIPTION
6-M	HANDWRITTEN RE: DON'T DEFEND. ATTACK 6 March 63 (2 pgs)
6-N	HANDWRITTEN RE: POLICY ON SUITE ? MAXIMUM THREAT (3 pgs)
6-O	HANDWRITTEN TO BRAINMAN RE: FAIR GAME (1 pg)
6-P	RE: SUITE IS TACTICAL ? WE MUST ATTACK – 1968 (4 pgs)
6-Q	HANDWRITTEN RE: NEWS OF WORLD SUIT/FAIR GAME
6-R	HANDWRITTEN HUBBARD LETTERS – "DEAR CHIEF CONSTABLE"/ SLANDER IN NAME OF ORGANIZATION (5 pgs)
7-A	SHOWS: HUBBARD OWNED AND WAS RESPONSIBLE FOR PAYING THE CREW ON THE S.O. SHIPS "You keep on your books the sale price of St. Hill as a business." (9 pgs)
7-C	"RE" THE PR COUNCIL" – OMAR TO DO VIDEO (115 pgs) 29 Oct. 81
7-J	HUBBARD DISPATCH CONCERNING FINANCES 31 March 68 (4 pgs)

Additionally it is requested that you provide an index documents in the courts custody which were not marked as exhibits.

DECLARATION IN SUPPORT OF PETITION TO ENFORCE INTERNAL REVENUE SUMMONS

I, Steven J. Petersell, declare as follows:

1. I am a Special Agent with the Los Angeles District Director's office of the Internal Revenue Service, Criminal Investigation Division, and have been conducting criminal tax fraud investigations since 1977.

2. For the past five months, the Los Angeles Criminal Investigation Division has been conducting a federal tax investigation involving various individuals connected with the Church of Scientology, including Lafayette Ronald Hubbard (L. Ron Hubbard"), relating to possible criminal and civil violations of the Internal Revenue Code and related provisions. This investigation, which is still ongoing, has been conducted under the supervision of C. Philip Xanthos, CID Branch Chief, IRS, Los Angeles District Director's Office. During this investigation and in my capacity as a special agent the summons identified in paragraph 5 of the petition was served by me on October 24, 1984.

3. I have read the Petition to Enforce Internal Revenue Service Summons filed in this matter. Each of the items listed in paragraph 6 thereof, and identified in the summons (Exh. No. 1), as well as the MCCS tapes discussed in paragraph 7 thereof, is relevant to the investigation of L. Ron Hubbard in one or more of the following respects:

A. Determining the extent to which income from the Church of Scientology inured to the benefit of L. Ron Hubbard.

B. Determining whether L. Ron Hubbard conspired with others to impair and impede the Internal Revenue Service in the administration of the tax laws.

C. Determining whether any violations of the Internal Revenue laws were done willfully with intent to evade tax.

4. None of the materials listed in paragraph 6 of the Petition are in the possession of the IRS; nor, as a result of the Court's Order of December 10, 1984, are the MCCS tapes in possession of the IRS.

5. There is no Justice Department referral in effect with respect to L. Ron Hubbard for the years to which the summons relates.

Under penalty of perjury, I declare the foregoing to be true and correct.

Executed this 15 day of January, 1985 at Los Angeles, California.

/s/ STEVEN J. PETERSELL
STEVEN J. PETERSELL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 85-0440-HLH

UNITED STATES OF AMERICA, PLAINTIFF

v.

FRANK S. ZOLIN,
CLERK OF THE SUPERIOR COURT, DEFENDANT

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INTERVENOR

Filed JUL 11, 1985

THE HONORABLE HARRY L. HUPP, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, April 29, 1985
Tuesday, April 30, 1985

ROBERT F. STARK, CSR #5104
Official Court Reporter
419 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 617-3273

[2] **APPEARANCES**

For the Plaintiff

ROBERT C. BONNER, United States Attorney
BY: CHARLES H. MAGNUSON, Assist. U.S. Attorney
ROBERT S. HORWITZ, Assist. U.S. Attorney
1445 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 688-2410

For the Defendant

DEWITT W. CLINTON, County Counsel
BY: GORDON W. TRASK, Senior Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1886

For the Intervenor

OVERLAND, BERKE, WESLEY, GITS, RANDOLPH AND LEVANAS
BY: DONALD C. RANDOLPH, ESQ.
10951 West Pico Boulevard, Suite 300
Los Angeles, California 90064
(213) 474-6020

and

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN
BY: ERIC LIEBERMAN, ESQ., and
EDWARD COPELAND, ESQ.
740 Broadway at Astor Place
New York, New York 10003-9518
(212) 254-1111

[3] *For Intervenor Mary C. Hubbard*

MICHAEL LEE HERTZBERG, ESQ.
275 Madison Avenue
New York, New York 10016
(212) 679-1167

---

[80] * * * * *

THE COURT: Mr. Randolph?

MR. RANDOLPH: Your Honor, I wonder if the Court would allow other counsel to direct their comments to the tentative. I, of course, would like to take a couple of minutes with respect to the bad faith aspect. I will do it in whatever order –

THE COURT: Do it right now.

MR. RANDOLPH: All right.

THE COURT: That's the first part of this tentative ruling.

MR. RANDOLPH: Yes, Your Honor.

I am just going to take a couple of minutes and talk about three items that I think I would like to ask the Court to allow counsel to pursue. I will not rehash all of our arguments concerning what the standard is for bad faith. We presented that in our papers, and the Court has that before [81] it.

We have from the outset, Your Honor, argued that there is a collateral purpose to this investigation. That being to assist, to be an information-gathering agency for the Department of Justice, and in one particular circumstance not for the Department of Justice in a criminal investigation necessarily, but for the Department of Justice in two civil cases in which that Department is involved. And we have referred to those cases as the Linberg

case which is currently pending in the Central District, and the Founding Church case versus among other defendants the I. R. S. in Washington.

THE COURT: Mr. Randolph, I know you feel that way about it. But you spent an hour and fifteen minutes hammering away from Mr. Xanthos yesterday and you didn't get a word of confirmation of that.

MR. RANDOLPH: One of the problems with Mr. Xanthos, if I may, by his own admission, he didn't have the facts surrounding what occurred at the Holiday Inn. And I would like to just take a minute and give the Court the background and why Mr. Lipkin is a necessary witness in that regard.

In the summer of 1984 both the Linberg and the Founding Church cases were not going well for the Government. In the Founding Church case they had been ordered to produce 80,000 documents by the court in that case. In the Linberg case, in this court, the names and documents with respect to [82] the informants were ordered to be disclosed to counsel for the Church.

In June of 1984 the Government brought in, this again is in the Linberg case now, F. B. I. Agent, also attorney, named Thomas Dowdy. He was brought on the scene and assigned to the Linberg case.

At about the same time, Your Honor, you have Mr. Dowdy, you have these witnesses from the A. A. C., that's Advanced Abilities Center, located in Santa Barbara. The staff members of the A. A. C. are witnesses Reisdorf and Nelson who the Court has heard me talk about before. The A. A. C. is a struggling group of ex-Scientologists who are trying to establish themselves as an alternative to the Church of Scientology. They had proposed, and I understand their tax-exempt status is still under consideration. Reisdorf and Nelson were staff members and on the

payroll of the A. A. C. and necessarily interested in its, in the continued viability of that organization.

By the declarations that have been submitted to this Court by the I. R. S. agents, the witnesses Reisdorf and Nelson would not appear and cooperate with the Government in their investigation unless they were summoned to do so. The interviews were structured so that these witnesses would believe they were compelled to appear and cooperate both by the I. R. S. and the F. B. I. agents who were the [83] attorneys for the Linberg case. That is what arises from the circumstances.

Now, we know that the witnesses felt that they were compelled to talk to both agencies, because as I have submitted excerpts of their declarations, they testified that they believed that to be the case. They came to talk not only to the I. R. S. who had summoned them but they were led to believe that they had to talk to the F. B. I. agents/attorneys because they were compelled to do so by the summons.

In order to create this aura of authority to insure the cooperation of these witnesses, it was absolutely necessary to have coordination of these interviews so they would occur at the same place and at the same time. In order to do this, you had to have interagency coordination, and this did occur.

THE COURT: Mr. Randolph, let me ask you this: I think that you're missing the point I tried to make yesterday. We're talking about the bona fides of this summons as used to get information from the now on-going I. R. S. investigation. There's not an iota of evidence that this summons is being prosecuted for any reason other than to gather information for the on-going investigation. No indication it's being used to harass anybody. No indication it's being used out of personal spite. No indication that it's

being used for a collateral purpose. The I. R. S. tells me, no reason to [84] doubt it, that they are conducting a tax investigation of Mr. Hubbard for '79 to '83—'79 to '83?

MR. RANDOLPH: Yes, '79 to '83.

THE COURT: That this information is being—that this summons covers, this will be used for that investigation and is not being funneled to the Department of Justice, that no request for prosecution has been sent over to the Department of Justice.

Now, isn't that the only thing in front of me?

MR. RANDOLPH: Your Honor,—

THE COURT: Whether in some collateral proceeding somewhere else there was or was not questionable activity is not something that I don't think I want to find out about. Because it's got nothing to do with whether this summons is being pursued for inapplicable or inappropriate purpose. It's as simple as that.

Now, that was the basis of a number of evidentiary rulings I made yesterday. And it's the basis for this tentative ruling I've got here now. There is just nothing there. If on some prior occasion the civil end of the United States and the I. R. S. cooperated with themselves, with each other, in a way they should not have, which is what you're suggesting,—

MR. RANDOLPH: Absolutely, Your Honor.

THE COURT: —it's got nothing to do with what [85] I've got before me. You have to pursue that in some other forum where it would be a relevant item.

MR. RANDOLPH: Well, I understand. I think the record is very clear as to the Court's ruling in this regard. And I appreciate that.

THE COURT: I wanted to lay it out very clearly so that you are not in any doubt, so that if you and the Government take this tentative which has a little yes and a little no

in it up to the Ninth Circuit, they will know exactly what I thought.

For that reason, for you to tell me about all the mean things that have been done to the Church in the past, whether in Santa Barbara or anywhere else, just really isn't meaningful to me.

MR. RANDOLPH: I understand that, Your Honor. The reason I have been raising the Holiday Inn situation is to show that this administrative summons is part of the investigation which is being used to provide information to another government agency. And since if the investigation is being used for an improper purpose, and this administrative summons is a part of that investigation, then the administrative summons must fall or at least the Court has—

THE COURT: But from what I have heard, I don't believe that's the case. And I don't think there is any evidence that that's the case.

[86] MR. RANDOLPH: At any rate, Your Honor, that is the state of the law that we are—or the stated facts we are trying to—

THE COURT: You put Mr. Lipkin's boss and Mr. Petersell's boss on the stand yesterday for an hour. And did you see anything other than a supervising I. R. S. agent trying to do his job? I didn't.

MR. RANDOLPH: Well, Your Honor, what I saw was a gentleman when we got down, for instance, to the coordination of the Holiday Inn situation, he said I was not involved. Mr. Lipkin made those arrangements. But Mr. Xanthos said one other thing. He said I'm the one that selected the location. That being the Holiday Inn in Ventura. I suggest to this Court that it strains the imagination to believe that the I. R. S. could have selected a date and a place in Ventura, California, for interviews that the

Department of Justice, 3,000 miles away, happened to select the same place and the same date for their interviews of the same witnesses. There had to have been coordination, Your Honor.

THE COURT: Unless the witnesses wanted it that way. And I don't think I want to find out because I don't think it's relevant. Yes, it's entirely possible the witnesses wanted it that way.

MR. RANDOLPH: There could be a benign explanation.

THE COURT: But the point I'm making to you is that [87] I don't want to follow that trail because I don't think it's relevant to what I've got here.

MR. RANDOLPH: Well, I understand the Court's point.

There is one other area. That was my argument for asking for Mr. Lipkin's testimony. I think that in dealing directly with this administrative summons we get more to the heart of it with the evidence that was disclosed yesterday regarding the coordination between the attorneys for the Founding Church case in Washington, D. C., in which the I. R. S. is a civil defendant and counsel for the I. R. S., Mr. Cohen. Now, the timing of this is very critical, and there is just a couple of facts.

This administrative summons, if my memory serves—well, this administrative summons was served on I believe October the 21st. It contains a list of documents, Your Honor, on I'd say three, four pages of specifically-described documents.

At or about the same time as this administrative summons was served, you had a similar request coming from the Government attorneys in the Founding Church case that was served on counsel and was set for a hearing before Judge Breckenridge here in Los Angeles in which

the attorneys in the civil cases were asking for not a few documents which happened to coincide, a list of three or four pages, which [88] if you laid it on top of this one, and held it up to the light, the words would interface, Your Honor, a virtually identical list of documents. These lists were not—of exhibits and the description of these exhibits were not published anywhere, Your Honor. They were not part of a record from which they could have just taken them and attached them to their administrative summons. This was a list that was prepared by the I. R. S. There was coordination.

The unmistakable conclusion is that there was coordination between I. R. S. counsel and the Government counsel. And we know how that occurred from Mr. Xanthos' testimony yesterday, because he stated on September the 13th he had a communication with the Government counsel in the Founding Church case. That was Mr. Licht and Mr. Greenberg, if I'm not mistaken.

That subsequent to Mr. Xanthos' conversations with those two attorneys, he was aware of the fact that Mr. Cohen was speaking with them. My impression from the testimony yesterday was that Mr. Cohen began communications with those attorneys shortly after Mr. Xanthos had those communications in September 16th. I suggest to this Court that what you have here is an appearance that the I. R. S., who had access to the taxpayer information at that time, Mr. Xanthos testified that the Government counsel had access to their taxpayer information before this administrative [89] summons was prepared. Since it was prepared and served at least before October 21st, let's assume that they had them at—

THE COURT: Wait a minute, Mr. Randolph. What are you suggesting? That the Government is after these documents to turn them over to the Government lawyers handling the civil case?

MR. RANDOLPH: Absolutely. And we have raised a serious question as to whether Mr. Cohen who had the taxpayer information before him from which he prepared this list them made this list and this information available to Messrs. Greenberg and Licht who were, therefore, able to duplicate it and have a different—and go on a separate track to Judge Breckenridge.

THE COURT: Mr. Magnuson, is the Government willing to agree to an order, as part of the order enforcing the summons, that the documents are not to be delivered to any other branch of government unless and until criminal proceedings are requested?

MR. HORWITZ: Your Honor, under Section 6103 of the Internal Revenue Code, there are procedures by which another government agency if it seeks an ex parte application through a court can obtain a court order obtaining taxpayer attorney information.

THE COURT: Except by order of court. Is that [90] agreeable?

(Pause.)

MR. MAGNUSON: Your Honor, I would have to think about that. I'm not certain that it's always by court order. For example, I think if documents show the existence of a criminal act, that that might be circumstances under which the information could be available to another agency.

MR. HORWITZ: Your Honor,—

MR. MAGNUSON: That exception may also apply. Except, you know, I would state to the Court in absence of an exception to the disclosure rules, they will not be. Now, I don't know if that helps at all. And one of those exceptions may require a court order.

MR. HORWITZ: I think, Your Honor, in a situation where there is government—the Federal Government is involved in litigation that is not involved in a tax matter, it

can seek through a court order the I. R. S. text or taxpayer return information. I also think there are provisions where the I. R. S. if it obtains evidence of a criminal act can communicate directly to another governmental agency to alert it to the criminal act without a court order. There are specific provisions relating to how a communication may take place.

MR. MAGNUSON: I don't want to be too technical, Your Honor, but also in the exercise of their investigatory [91] process, if the use of what information is available to the agents is in their view appropriate to disclose to any other source for the purposes of obtaining further information, then under those circumstances, it is also allowed to be disclosed. So there are—you know, the Service has the opportunity in pursuing its case to use under certain circumstances information it does have.

THE COURT: Go ahead, Mr. Randolph.

MR. RANDOLPH: Your Honor, the bottom line of what I was speaking to with respect to communication between Messrs. Cohen and Greenberg is that the coincidental filing of this administrative summons and the identical list filed before Judge Breckenridge raises the specter that there was coordination between those agencies, since the I. R. S. attorneys were privy to the taxpayer information and the Government attorneys in the Founding Church case were precluded by law from being privy to that, it appears that there has been a violation of 6103, that there has been an exchange of information, and, therefore, raises the specter that the I. R. S. is simply attempting in this investigation and with this summons now to get the information for the Founding Church attorneys so that they, if they fail before Judge Breckenridge, well, they would have had two opportunities to get that same information. We can resolve this question once and for all by conducting a

brief period of [92] testimony from Mr. Cohen who apparently is the person who has that information. That was the second request I had for this Court, that I felt both Messrs. Lipkin and Cohen, the substantial questions remain in this investigation, and their testimony would be able to resolve an answer to those questions it appeared from Mr. Xanthos.

Finally, Your Honor, I would ask the Court to make an order as was just suggested, and in the terms that the Court just said, that there would be no such disclosure of these materials. I beg to differ with what Government counsel have stated is the state of the law with respect to Government disclosures.

There is no such arbitrary allowance for disclosures based upon the I. R. S. feeling that certain evidence may give rise to a crime of fraud. And if the Court has any question in this regard, I direct your attention to Section 6103, subsection 3, which talks about the form of a request in which information may be transmitted both from the I. R. S. to government counsel representing them in these proceedings and tax-related proceedings, and then in Section 4 talks about when the government counsel may then disclose it during the course of these proceedings.

And Section 3 definitively states that the only time in which the Secretary's authorized to disclose information to counsel is when there is a referral, when the [93] procedure is authorized by Chapter 76, which is not applicable, or if the Secretary receives a written request. They cannot cavalierly on their own disclose information. They must abide by Section 6103.

From the comments made by both counsel, I am alarmed and concerned that they have a different viewing of that. And it's for that reason I would ask the Court and urge the Court to impose such an order. So that there are

no further problems with disclosure of taxpayer information.

I thank the Court for listening to my comments.

* * * * *

[101] MR. HERTZBERG: Your Honor, after I have addressed waiver, I hope to convince you that the relevance theory before Judge Breckenridge was much broader than the one here, and that in fact you should find that under the issues that are before this Court, there is no relevance. But let me continue on the waiver matter first.

I would like to believe that if that issue had been reached by Judge Breckenridge, the waiver issue, as to 6-B, he would have found that there was no waiver, because the uncontroverted record before this Court and the same record was essentially before—well, it wasn't the same record before Judge Breckenridge. The uncontroverted record before this Court, Your Honor, shows that that document was purportedly obtained by Armstrong in an entirely different fashion and from an entirely different corpus of documents [102] than the ones that 5-K and the documents that Mr. Lieberman addressed were received from.

Now, I am not for a moment conceding that there was a waiver as to 5-K or any of Mr. Lieberman's documents. We maintain that under the law that general consent, quote, unquote, that Judge Breckenridge referred to is not the proper standard with all due respect to Judge Breckenridge, and that we are correct that there is not a proper waiver as to those documents. But as to this one, the facts are that that single document, 6-B, was obtained from what is called the controller archives, and the unrebutted affidavits of Mr. Licht, the attorney who was counsel for Mrs. Hubbard at the Armstrong trial. And from Mr. Vorm and his--the excerpts of the transcript,

some of which were submitted by the Government, ironically, in this case demonstrate that that 6-B document was in these controller archives. That the controller archives were a specific set of materials which Mrs. Hubbard had given explicit instructions that they contained materials personal to her, that those materials should be segregated out of the controller archives, not kept by the Church. They were not for the Church use. And that that procedure was being effectuated.

That Mr. Armstrong came along, and under a purported authority not granted by Mrs. Hubbard, not by Mrs. Hubbard, he inveigled Mr. Vorm to furnish him with Exhibit 6-B, and in [103] fact Mr. Vorm says in his entirely credible declaration that he attempted to reach Mrs. Hubbard to find out whether he could make an exception to the rule that she had given him not to make this available for Church or other use. He was unable to do so, and in the end, regrettably, he capitulated to the rather strong demands by Mr. Armstrong and furnished it to him.

Your Honor, that is not a waiver. And it is certainly not a waiver by Mrs. Hubbard. And as Your Honor knows from the Hugle case, which is the recent authority from the Ninth Circuit on the marital confidence, marital communications privilege, both spouses must waive. So even if Your Honor finds that the general, there was a general consent as Judge Breckenridge found flowing from the petition of Mr. Armstrong to Mr. Hubbard, Your Honor would also have to find in order to turn this 6-B document over to the Government, that Mrs. Hubbard knowingly waived, and I submit to Your Honor that on the state of this record, no such finding can be made whatsoever.

As to relevance, Your Honor, the Government in applying to Judge Breckenridge for access to 6-B posed two theories to Judge Breckenridge. One, they said that the documents they were seeking, including 6-B, was desired to demonstrate generally unclean hands of Mr. Hubbard and the Church directed towards the Government.

[104] The other theory which the Government relied on, in fact it was their major theory, was control. What did they mean by control? They meant that these documents, including 6-B again, demonstrated Mr. Hubbard's control of the Church. Well, that is exactly, in the most general and perfunctory fashion, the proffered reason offered in this case by the Government for access to that document. There is but a single –

THE COURT: Didn't they also argue that, and don't they argue here, that this document was written to Mrs. Hubbard not as a wife but as an officer of the Church?

MR. HERTZBERG: No, Your Honor. That was 5-K. Incidentally, for the record, Your Honor, I know Your Honor did not rely on that in rejecting –

THE COURT: No. I didn't put that down. I was trying to sort out which is which.

Go ahead.

MR. HERTZBERG: There is no authority for that proposition in the law anyway, but that was 5-K so the record is perfectly clear. That is not 6-B.

All we have in this record on 6-B, which is the document I am discussing, is a single passing statement by Mr. Petersell in one of his declarations, his other declarations in no way addresses the marital documents, interestingly enough. It addresses the attorney ones, but not the [105] spousal communication.

In the one attempt he made to show relevance, he says in Paragraph 2 of his March 8th declaration, this document may be relevant to the investigation and it relates to the control of the Church of Scientology organization. That's in Paragraph 7.

Now, Your Honor, I request Your Honor to bear in mind the Goldman case which Mr. Lieberman alluded to, where information, where documents dated one year

before the relevant tax period were not turned over pursuant to a summons request because the mere assertion of relevance for tax years outside the delineated period was insufficient. This document 6-B that we are talking about, was March, 1967. That is the date of that document. That spousal confidential document.

Your Honor, I would submit under the test that Your Honor followed the first time there was a hearing on this matter, where Your Honor was inclined to generally exclude all documents dated in the forties, fifties, and sixties, that this document comes within that general rule that Your Honor has already followed, and that when you add the Goldman case in here where we have a document now that's some fifteen years or more, my math is terrible, before the relevant, the earliest relevant time period under the Government theory of relevancy in this case or investiga[106]tion, that there—this document is not relevant. And when you also add on that their only—their mere assertion is on the issue of control, that is the very issue that Judge Breckenridge considered, and he rejected the Government's attempt because he found it be irrelevant. I won't belabor the point, Your Honor.

I do also want to point out, because I am disturbed at the thought that this confidential marital communication will be disclosed to the Government, this is a handwritten letter, Your Honor. It begins with a salutation from Mr. Hubbard to his wife in a term of endearment, and it concludes with a similar affectionate signing off, and it discusses in most part the most personal kind of matters. And to the extent that it does not discuss the most personal kind of matters, it discusses what are typically matters of concern between spouses. And I urge this Court to reconsider its tentative ruling with respect to 6-B.

THE COURT: Talk about 6-B, Mr. Horwitz.

MR. HORWITZ: Okay. First of all, Your Honor, one of the Government—as Mr. Petersell said in one of his declarations, the investigation involved in one part of it is to determine whether there was an attempt, a conspiracy to defraud the United States in part by claiming that Mr. Hubbard had no control or authority over the Church of Scientology.

[107] THE COURT: Excuse me. Is that a '68 document?

MR. HORWITZ: The conspiracy goes back.

MR. HERTZBERG: '67, Your Honor.

MR. HORWITZ: He said it was a '67 document, Your Honor. However, we have not seen it.

The conspiracy goes back to 1966, when Mr. Hubbard claimed he no longer had control over the Church, he was cutting himself off from all control of the Church or authority over the Church. And this document which occurs one year later from his wife may contain statements as to how he intends to continue to control the Church and how he continued to control the Church through later years.

THE COURT: I hadn't realized it was a '67 document. It will go in the not produced list without sufficient showing of relevancy.

All right. Any other comments you want to make, Mr. Horwitz?

MR. HORWITZ: Other than the 6-B document, Your Honor, which we feel is relevant because it occurs after Mr. Hubbard claimed he no longer had control over the Church, it may be evidence that he continued to have control over the Church, unless Your Honor is going to change any other parts of this tentative.

THE COURT: No. But I thought 5-G and 5-1 documents were outside the ten years before your tax years. [108] This one falls in the same category. It seems to

me the relevancy has got to be far too attenuated. So I will move that over to the same category as the other sixties documents.

MR. HORWITZ: Your Honor, just one point, Your Honor. I do not have the exact cite, but there is a case called—Circuit Court case called U.S. versus Dennis, where the court held the documents for several years before the alleged acts of a conspiracy in a criminal case that allegedly occurred would be allowed into evidence if they could show the person's motive or plan or his mind frame. And if the document from Mr. to Mrs. Hubbard shows Mr. Hubbard setting up organizations so he can control indirectly the Church, that would be relevant.

THE COURT: If that is taken as the only standard of relevancy, there is literally nothing that ever happened for forty years, thirty years, that's not relevant. On a previous occasion, when you weren't here, last March, we discussed the documents from the forties and fifties and also sixties.

All right. Anything else? Mr. Horwitz?

MR. HORWITZ: Just one—

THE COURT: Mr. Magnuson?

MR. HORWITZ: Your Honor, just one point for clarification.

THE COURT: Yes.

[109] MR. HORWITZ: In the order are you going to add that there will be no disclosure except pursuant to 6103 or anything specific?

THE COURT: I am going to tell you unless a criminal tax prosecution is sought or an order of court is obtained.

MR. HORWITZ: We would propose that since Congress is the one who set out the procedures under which disclosure could be made that if there is any prohibition, it should be—you know, that no disclosure will be made except as provided in 6103.

THE COURT: I am going to do it this way. Anything else, Mr. Magnuson?

MR. MAGNUSON: I would like to address that point Your Honor.

THE COURT: Certainly.

MR. MAGNUSON: I submit to the Court that there is no forum for allowance of such a ruling by a court. That if there is some disclosure that is some way improper, that may raise other issues. But we are here on a summons enforcement. Now, what is happening is there is a request by the Court ex parte almost at this point in time without ever suggesting to the Court that it has the authority to do so that it enter such an order restricting the use of the Internal Revenue Service of information it has. And I suggest to you that there is no authority for doing so. And it ought [110] not to be done.

THE COURT: I was told all through this case that this investigation is being conducted by the Internal Revenue Service pursuant to Internal Revenue considerations and not for other Department of Justice considerations.

MR. MAGNUSON: Yes.

THE COURT: And, therefore, isn't it logical that until the Internal Revenue Service is ready to go to the D. O. J. to ask for a criminal charge to be made, that it stay within the Internal Revenue Service?

MR. MAGNUSON: That may be ture, Your Honor, but you are now asked to enter an order directing what the Service should or should not do. And the law is already there as to what they should or should not do. And if they violate that law, there may be some other appropriate steps to be taken, but this isn't the place to do it.

THE COURT: I think I can—I think it's a reasonable place, Counsel, to be perfectly frank with you.

MR. HORWITZ: Could I refer you to the case of Stuckey versus the United States in which there were

allegations made by the taxpayer of bad faith because the Internal Revenue Service was coordinating an investigation with the Drug Enforcement Administration and apparently giving information to the Drug Enforcement Administration pursuant to requests made under 6103 and the court there held that even [111] if there were disclosures to other agencies, as long as they were done under the terms of 6103, that they were not improper and did not invalidate the summons since the I. R. S. had a tax purpose for the investigation. And we submit first the Court should not put a restriction on disclosure; and if the Court feels one is necessary, it should limit it to no disclosure except pursuant to 6103.

THE COURT: It seems to me that if you feel the need to disclose, you can go to court and ask for it.

MR. HORWITZ: But there are situations, Your Honor, where other government agencies, such as Congress, can make a request to the Internal Revenue Service for information.

THE COURT: If Congress asks you for it, I'll give you permission.

(Laughter.)

* * * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 85-0440-HLH

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FRANK S. ZOLIN,
CLERK OF THE SUPERIOR COURT, DEFENDANT

Civil No. 85-2253-HLH

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INTERVENORS

UNITED STATES OF AMERICA, PLAINTIFF

vs.

AUTHOR'S SERVICE, INC., DEFENDANT

Filed June 18, 1985

THE HONORABLE HARRY L. HUPP, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, June 10, 1985

ROBERT F. STARK, CSR #5104
Official Court Reporter
419 United States Courthouse
312 North Spring Street
Los Angeles, California 90012

[2] **APPEARANCES**

For the Plaintiff United States of America

ROBERT C. BONNER, United States Attorney
BY: CHARLES H. MAGNUSON, Assist. U.S. Attorney
ROBERT S. HORWITZ, Assist. U.S. Attorney
1445 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 894-2410

For the Intervenor Church of Scientology of California

OVERLAND, BERKE, WESLEY, GITS, RANDOLPH AND LEVANAS
BY: DONALD C. RANDOLPH, ESQ. and
MARIA STRATTON, ESQ.
2566 Overland Avenue, Seventh Floor
Los Angeles, California 90064
(213) 559-8150

and

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN
BY: EDWARD COPELAND, ESQ.
740 Broadway at Astor Place
New York, New York 10003-9518
(212) 254-1111

For the Intervenor Mary Sue Hubbard

MICHAEL LEE HERTZBERG, ESQ.
275 Madison Avenue
New York, New York 10016
(212) 679-1167

[3] **APPEARANCES**

For the Defendant Author's Service, Inc.

LENSKE, LENSKE & HELLER
BY: STEPHEN A. LENSKE, ESQ. and
LAWRENCE E. HELLER, ESQ.
Woodland West Building, Suite 315
6400 Canoga Avenue
Woodland Hilis, California 91367
(818) 716-1444

---

[4] **LOS ANGELES, CALIFORNIA;**
MONDAY, JUNE 10, 1985; 11:00 A.M.

THE CLERK: Item Number 12. CV-85-0440. United States of America versus Frank S. Zolin. For petitioner's motion for reconsideration of the Court's April 30th, 1985, order.

Counsel, state your appearances, please.

MR. HORWITZ: Robert Horwitz, Assistant United States Attorney, appearing for the petitioner.

MR. MAGNUSON: Charles Magnuson, Your Honor, also appearing.

MR. RANDOLPH: Good morning, Your Honor, Donald Randolph on behalf of the Church of Scientology.

MR. COPELAND: Edward Copeland for the Church of Scientology of California.

MR. HERTZBERG: Michael Lee Hertzberg for Intervenor Mary Sue Hubbard.

THE COURT: All right. Mr. Horwitz, you have seen the tentative ruling?

MR. HORWITZ: Yes, Your Honor.

THE COURT: Let me have your comments on it.

MR. HERTZBERG: One comment first to apply to the motion with respect to the M. C. C. S. tapes, and that is I

believe, Your Honor, at the March hearing, as late as at the March hearing, the Government counsel had urged the Court [5] to listen to the M. C. C. S. tapes in camera before ruling.

THE COURT: Yes. That's what by reference here discussing it at one time. But by the time you got it up to hearing, in fact we talked about the possibility of the Church preparing the transcript for me and so on. But nothing ever happened about that. And we got up for hearing, and you had the declaration containing the quotation from it, and we argued the case on that basis. So what's there to do now by hindsight?

MR. HORWITZ: Nothing, Your Honor. Except we feel we did not waive our initial argument that—my understanding of the Court's ruling is that because we didn't present it again at the April hearing, you in effect believed that we waived our argument that the Court should listen to the tapes.

THE COURT: Certainly. You gave me partial transcripts. So we proceeded on that basis. That was the basis on which the case was argued, at some length I might add. I don't see that one, Mr. Horwitz.

MR. HORWITZ: Okay. Secondly, as to the second thing, the Court's restraining the I. R. S. from providing information even if it's requested by other governmental agencies under 6103 as our brief set out. Can I address this to both the Zolin and the A. S. I. cases since I believe the issue is in both cases?

THE COURT: If you are going to comment on it with regard to Author's Services, we better call that case and get their lawyer up here, too, because that's an issue in that case.

Let's call for the limited point of whether I. R. S. use of the material should be limited to tax investigation pur-

poses, call Number 11 also, U. S. A. against Author's Services, and get additional appearances on that case. I see Mr. Lenske over there. Will you state your appearance.

MR. LENSKE: Stephen Lenske appearing for Author's Services, Your Honor.

MR. HELLER: Lawrence Heller.

THE COURT: Mr. Randolph is in that case also.

MR. RANDOLPH: Yes. And Maria Stratton is also appearing for the Church of Scientology.

THE COURT: All right. Miss Stratton.

As you note, Mr. Horwitz, I have the same order, same tentative proposal for an order in Author's Services case as I put on the other case.

MR. HERTZBERG: Yes, Your Honor.

THE COURT: Now here you have respondents whose main fear or at least one of the main fears is that these materials are going to be used for other purposes.

MR. HORWITZ: Yes.

THE COURT: While the items that give rise to those fears don't have anything to do directly with the summons, [7] nevertheless, they have apprehension. The Government tells me we are not going to use it for the civil cases that the Church is involved in with the I. R. S., and it isn't going to be used for criminal purposes unless and until the matter is referred over to the Department of Justice for prosecution. Why does the I. R. S. complain, then, about an order which says okay, without court approval, you shan't give it to these people?

MR. HORWITZ: First of all, Your Honor, as to their fears, their fears, the fact that they may fear that something will happen is insufficient for the Court to enjoin someone from taking an action which is what the Court is doing.

Secondly, Your Honor, Congress has specifically set out certain conditions, situations—

THE COURT: Are the fears reasonable?

MR. HORWITZ: No.

THE COURT: Why not?

MR. HORWITZ: Because there has not been any showing that I. R. S. has given any information to other governmental agencies for other purposes.

Secondly, Your Honor,—

THE COURT: Why does the I.R.S. then object to an order which says ask me first?

MR. HORWITZ: For the simple reason—there are several reasons, Your Honor. First of all, the Court is not [8] only prohibiting disclosure which may be in violation of 6103 but prohibiting disclosures which are in total compliance with 6103. In fact, the Court is substituting its judgment for that of Congress as to when disclosures may be made and under what circumstances.

THE COURT: You come in here and you make an application which shows it's within the intent of Congress, you won't have any difficult from me.

MR. HORWITZ: Secondly, Your Honor, but the—Your Honor, the Court, as I have noted in our brief, like the Chemlon Products case, the courts cannot enjoin the United States from providing information to other governmental agencies which is in effect what this Court is doing.

Secondly, Your Honor, the Court's order in this regard also prohibits, will in effect make tax investigation more difficult because in other situations where a third party is requested to testify or give information to the I. R. S., it, too, may claim that we don't want to give you any information unless you enter into some type of agreement with us such as the Court ordered in Church of Scientology that you will not give any information to any other governmental agency or discuss it with anyone else without getting a court order or getting our approval. And this may in

effect multiply the number of summons enforcement actions.

THE COURT: I thought of that. I think that I [9] should make it clear that this order is in a sui generis case. The I. R. S. and the United States in general carrying on litigation with each other in innumerable places and courts. And it looks like it isn't going to abate from what I have seen. You don't have that in any other summons proceeding that I know of. It seems to me this is a sui generis case.

If you didn't have these various levels of litigation between the Government on the one hand and the Church on the other, then where there is fear that information acquired for one purpose may be in effect used for civil discovery in the other, I wouldn't think it necessary to make such an order. But this case is, therefore, not the typical case where you would routinely expect this kind of provision.

MR. HORWITZ: Your Honor, I beg to differ with you. The Stuckey, the Chemical Bank case, and some of the other cases that we cited involving 6103 question being raised, and all those proceedings they were involving, let us say, I. R. S. investigations of people who were allegedly engaged in illegal activities, such as drug dealing. And there was a realistic—there would be a realistic fear since there were ongoing Drug Enforcement Administration or U.S. investigations of people involved in illegal activities that since the I. R. S. was carrying on a tax investigation of that individual, that there may be a sharing of information. And the courts held that as long as it was [10] done under 6103, it was not improper that the I. R. S. would make a disclosure, and that was no need for limiting the summons.

THE COURT: If you come in here for permission and you come under the intent of the statute and the statute provides for it, then you will get your order.

MR. HORWITZ: There is another thing, Your Honor, and that is this: If, let us say, a—something like the Drug Enforcement Administration or F. D. A. or another Government agency begins a criminal investigation of, let us say, Mr. Hubbard and they request information from the I. R. S., we have to then disclose to them that we have received a request from the D. E. A. or the F. D. A., revealing to them that there is another investigation ongoing which the D. E. A. or F. D. A. at that time which may not want to reveal in public? In effect they would then be privy to whether or not there are other government investigations going on.

Also, Your Honor, if the information that we obtain, let us say, refers to contacts between the Church of Scientology or L. Ron Hubbard and another federal agency and the I. R. S. in its investigation here wishes to contact the Government agency referred to as having been in contact with the D. E. A. to—with the Church of Scientology, Mr. Hubbard, to find out the nature of the communication [11] and whether or not it is relevant, would they need a—

THE COURT: All I'm talking about is the items you get from the Superior Court. And in the case of Author's Service the items you get from them.

MR. HORWITZ: Yes. But if in the items there are references to meeting between either Mr. Hubbard or his representatives and let us say a representative of another state or federal governmental agency to talk about matters that may be relevant to the criminal investigation, would the I. R. S. have to get an order from this Court to contact that other agency to follow up on the lead contained in the material they get in the—through the A. S. I. or the Zolin?

THE COURT: I don't understand the question. We are not talking about I. R. S. gathering other information; we are talking about distribution of documents obtained from these summons.

MR. HORWITZ: But, Your Honor, let us say there is a document, a letter between Mr. Hubbard's representative and another federal or state agency and the I. R. S. contacts the person to whom the letter is directed and wishes to discuss with him what is discussed in the letter, and for purpose of that they have to, let us say, during the conversation, the person's memory is poor and they have to refresh it by showing him the letter, as often happens when you examine [12] a potential witness. Would the Government have to get an order from this Court for that purpose?

THE COURT: As it stands now, yes. To reveal the document for another purpose.

MR. HORWITZ: Would there also—

THE COURT: In other words, what I want the I. R. S. to do is in effect live up to what they told me their—is their intention, and that is gathering this information for the purpose of their tax investigation only. And that's why I'm doing this.

All right.

MR. HORWITZ: May I ask one question, Your Honor?

THE COURT: As a matter of law I want you to get the Ninth Circuit to tell me so.

MR. HORWITZ: May I ask one other question? If during the pendency of an appeal to the Ninth Circuit, there is a request from, let us say, another governmental agency for information from the—that was obtained pursuant to the A. S. I summons or due to information obtained through the A. S. I. summons, the Government has to in-

terview a witness who is an official of another agency, would an application to this Court be ex parte?

THE COURT: You won't even have the materials then, will you? I thought the last time counsel agreed that the order of this Court was stayed.

[13] MR. HORWITZ: Right.

THE COURT: Until – for sixty days, and then if there is a review sought during the pendency of the review.

MR. HORWITZ: Right.

THE COURT: So the question doesn't arise, does it?

MR. HORWITZ: Not that I'm aware of, Your Honor.

THE COURT: Okay. I'm going to leave that item in the order as it is.

Now, does that take care of U. S. A. against Zolin?

MR. HORWITZ: I believe it does, Your Honor.

THE COURT: Okay. As per tentative ruling.

* * * * *

Supreme Court of the United States

No. 88-40

UNITED STATES, PETITIONER

v.

FRANK S. ZOLIN, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 17, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

October 17, 1988

Justice Brennan took no part in the consideration or decision of this petition.

U.S. GOVERNMENT PRINTING OFFICE 1989 241-039/80022